1918.

SUPREME COURT OF THE UNITED STATES.

No. 184.

MARY L. BOSLEY ET AL., APPELLANTS,

vs.

ELIZABETH N. BOSLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE STATE OF MARYLAND.

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MARY LUCINDA BOSLEY and others
vs.
ELIZABETH N. BOSLEY. } In equity.

Transcript of the record for the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-nine: Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; U. S. Heath, judge of Maryland district; William L. Marshall, esquire, attorney; Thomas H. Kent, (of Jos.,) esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

MARY LUCINDA BOSLEY, Henry Bosley, Mary Jane Davis, Sally Ann Davis, James Bosley, and Meldrid Bosley, (infants,) by their guardian and next friend, John Bosley, and John Bosley, son of the said John,
vs.
ELIZABETH N. BOSLEY.

Be it remembered, that heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and forty-six, the said Mary Lucinda Bosley, Henry Bosley, Mary Jane Davis, Sally Ann Davis, James Bosley, and Meldrid Bosley, (infants,) by their guardian and next friend John Bosley, and John Bosley, son of the said John, by Charles F. Mayer, their solicitor, filed in the circuit court here their bill of complaint against the said Elizabeth N. Bosley, in the words and of the tenor following, to wit:

Bill of Complaint.

To the honorable the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, sitting in chancery.

Complaining, show to your honorable court, Mary Lucinda Bosley, Henry Bosley, Mary Jane Davis, and Sally Ann Davis, and James Bosley, and Meldrid Bosley, infants, citizens of the State of Missouri, by their guardian and next friend, John Bosley, a citizen of the said State, and also John Bosley, (son of said John,) a citizen as aforesaid.

That James Bosley, late of the city of Baltimore, deceased, died

leaving a will and testament, and codicil thereto, which in the orphan's court of Baltimore were duly proved, and which are of record in the office of the register of wills of Baltimore county, and a copy whereof, marked A, your complainants here exhibit as part of this bill.

And your complainants, orators and oratrixes, show, that by said will it will appear that various real estate is devised to Elizabeth N. Bosley, the widow of said testator, for life, with remainder to the children of John Bosley, (the above named next friend of the complainants,) and the heirs of said children; and that other real estate is devised to be sold, and the proceeds of sales divided among said children, or their heirs, for one-half thereof, and the said widow of said James Bosley for the other half thereof, and that said widow and said children and their respective heirs are made the residuary devisees and legatees of said James Bosley.

And your complainants show, that at the death of said James Bosley the said John had, as his only children and his only issue, his son, your orator, John Bosley, and his son Joshua Bosley, and his daughters, Nancy Davis, and Mary Lucinda Bosley, an infant, and James and Meldrid, infants, are his children, born since said James, the testator's, death, and that said Joshua has departed this life, leaving as his only heir his son, your orator, Henry Bosley, (said Joshua dying intestate;) and that said Nancy has also died, and intestate, leaving as her only heirs her daughters, your oratrixes, Mary Jane Davis and Sally Ann Davis.

And your complainants now further show, that, as will appear by said will, the said Elizabeth N. Bosley, widow of the testator, is empowered to sell the said real estate, the proceeds of which are divisible as aforesaid between her for a half, and your complainants for the other half, and is directed by the will to make the sale "as soon as circumstances shall permit."

And your complainants further state, and they charge, that they know not accurately and fully of what particular estate, real and personal, the testator died seized or possessed; but, as being in part said real estate, your complainants here, as part of this bill, (marked B,) exhibit a list of real estate; in which list, as nearly as may be, and determined according to the partial means of ascertainment of your complainants, there is a discrimination of the property devised to be sold as aforesaid and of that wherein the said widow of the testator has as aforesaid a life estate, and your complainants a remainder in fee.

And your complainants charge, that all the estate, real and personal, of the testator is within the knowledge of said widow, and may be specified and discovered by her in her answer hereto, for the purpose of exhibiting particularly not only what pertains to the two divisions as discriminated as aforesaid in said list, but also all that may be comprehended within the residuary estate aforesaid mentioned and disposed in the said will.

And your complainants further show, that by said will the said Elizabeth N. Bosley, the said widow, is made executrix, and that, accord-

ingly, letters testamentary to her as such executrix have issued from the said orphan's court of Baltimore county.

And your complainants state, that as such executrix said widow has become possessed of a large personal estate of said testator, and also that she has entered into and enjoys all the real estate of which the testator died seized.

And your complainants now further show, that by said codicil it will appear that, subject to payment of debts and legacies, the said testator devises to his said widow and her sister, Margaret E. Noel, his real and other estate acquired since the date of his will, to wit, the eighth day of January, in the year eighteen hundred and twenty-eight; and, after giving to the "old black woman, Sarah," a pecuniary allowance in place of the real property the will had given to her, and devising to Rachel Hillen for life a piece of ground in place of the money bequeathed to her by the will, and also bequeathing to his widow his estate called "Summer Hill," with the slaves and personal property on or belonging, and various personal securities, devises and disposes (the property devised for life to the widow, and in remainder to the children of John Bosley, by the will being recognised by the said codicil as under and subject to the said devise) as follows, to wit, "lastly, my pew in St. Paul's church and all other my property, real or personal, and all moneys in bank belonging to me at the time of my decease, I give, devise, and bequeath unto my said wife, Elizabeth N. Bosley, and her heirs, forever; and I do ratify and confirm my said will in everything except where the same is hereby revoked and altered as aforesaid."

And your complainants insist and claim, that the effect of said codicil is not to lessen any interest or benefit of your complainants (as child, and heirs of children, of said John Bosley) purported to be assured to them by said will, except it may be so far as said codicil makes specific devises or bequests in favor of said widow, and except as it may be as to the real property devised by the will to old Sarah, which may by the codicil, under the terms of the just recited clause thereof, pass to the said widow, together with the reversion of the property derived as aforesaid to Rachel Hillen, although these complainants do not admit that even such, to this extent, is the just construction of said codicil, while they maintain such must be the extreme extent of any modification effected by said codicil of the rights and interests of these complainants as accorded to them by the said will.

But your complainants further state and charge, that said Elizabeth N. Bosley, widow as aforesaid of the testator, insists, as your complainants are informed, that the effect of said codicil is to deprive them of all share in the residue of the testator's estate, wherein by said will they are devisees and legatees in common with said Elizabeth N. Bosley, and also of all share in the estate devised to be sold and shared equally between the said Elizabeth N. Bosley of the one part, and the children and their heirs of John Bosley (your complainants) of the other part, and that the benefit and property of your complainants out of the

testator is limited by the due import and force of said codicil to the remainder interest in the property devised as aforesaid to said Elizabeth N. Bosley for her life by the said will.

And your complainants state and charge, that they being thus, by the construction assigned by said Elizabeth N. Bosley to said codicil, debarred from all but the ultimate and deferred interest aforesaid under the said remainder in the estate of the said testator, your complainants have not come into possession of, nor in anywise enjoyed, nor had any benefit of or from any part of the estate, real or personal, of the testator, nor any avails, or issues, or profits thereof; nor has said widow of the testator in anywise accounted to your orator and oratrixes for or touching the said estate, real or personal, or any part, or product, or proceeds thereof.

And your complainants further state and charge, that said Elizabeth N. Bosley, under the power and direction confided to and enjoined on her by said will, has not sold, nor attempted to sell, any part of the estate of the testator in the proceeds of which she and your complainants are equally as aforesaid to share.

And of and concerning the selling as aforesaid, just referred to, your complainants insist and claim, that the rights of your complainants, in regard to the property to be sold, cannot be duly protected, nor your complainants have the full benefit of the disposition in their behalf, connected with the sale, under said will, unless as well the period as the terms of sale, and the prices to be accepted at the sales, and the whole proceeding of sale, be under the immediate direction of this honorable court, and under the care thereof as to all proceeds of sale and otherwise, so as to guard the interests of your orator and oratrixes against the contingencies of death and private administrations, and the confusion of funds, and all other difficulties incident to carry execution, not judicial, of a trust of such character. And, in like manner, your orator and oratrixes claim this court's immediate care and supervision in regard to the exercise of the power conferred by the said codicil upon the said Elizabeth N. Bosley; and that as trustee or trustees, according to the rules and course of this court in chancery, should be appointed, as well to sell and dispose of [as] change and alter, and the proceeds thereof to reinvest, all or any of the property given by said will for life to said widow, and in remainder to your complainants, being a power, as will appear, conferred by the said codicil on said Elizabeth.

And your orator and oratrixes now represent and charge, that under all the difficulties now set forth to your honorable court, they are not confirmed in their rights under said testator's testamentary dispositions, nor duly and conclusively instructed as to the extent of the interests they have title to thereunder; and that under the views and course of proceeding of said Elizabeth N. Bosley, in her capacity as executrix aforesaid, and in her pretensions as devisee of said James Bosley, your orator and oratrixes are deprived of the full and immediate benefit contemplated for them by said will and codicil, which, too, your orator and oratrixes are kept ignorant of the actual particulars of the estate, real

and personal, of the testator. And your complainants claim and insist that they are entitled against the said Elizabeth N. Bosley to the decree of this honorable court, declaratory of the true force and construction of the said will and said codicil, and of the estate, real and personal, descriptively and specifically, to, or out, or from, which, in any form, your complainants are entitled, under the said testator, to any interest or benefits of any kind, as well as to an account, according to this court, adjudication of the rights of your complainants from said Elizabeth N. Bosley, and a decree for their payment conformably; and, also, that they are entitled from said Elizabeth N. Bosley to a full discovery of all particulars aforesaid of the testator's estate, real and personal.

All which as above set forth, in regard to the impediments of your complainants and their exclusion from all benefit of said estate of the testator, and the question, doubt, and uncertainties aforesaid, are much to the grievance of your complainants.

In tender consideration whereof, and forasmuch as your orator and oratrixes are remediless in the premises, save in a court of equity:

To the end, therefore, that said Elizabeth N. Bosley, who is a citizen of the State of Maryland, as your complainants aver, and of the city of Baltimore, may, on oath answer the premises, and that said Elizabeth may set forth and discover all the estate, real and personal, of the testator, of which he died seized or possessed, or to which he was, at his death, in any wise entitled, and all of said estate that has come to the possession or enjoyment of said Elizabeth N. Bosley under any right or claim whatsoever; and that said Elizabeth N. Bosley may render to this court a full account of all the personal estate of the testator, and may account with your orator and oratrixes of and concerning all estate of the testator, so far forth as your complainants may be entitled *and to*, and be decreed to pay your complainants in the premises accordingly; and that the full force and effect of said will and codicil may be determined and declared by this honorable court; and that the estate of said testator may be specified and defined and declared by this court, and the rights of your complainants therein be decreed accordingly, wherein your complainants are under the testator, and under said will and codicil, interested and entitled under and according to the several clauses of said will and codicil respectively and distinctively; and that the estate to be sold agreeably to said will, wherein your complainants may have any interest, may be decreed to be sold in manner and under regulations as this court may prescribe, and on such terms of sale as the court may settle; and that of all proceeds of sale your complainants may be decreed and paid their proper portions; and that said Elizabeth may set forth all sales or conveyances made by her in any right whatsoever, under said testator, of any estate of said testator, real or personal, whereof he died seized or possessed, or whereto he had any title or claim, and all considerations in the premises to her or otherwise paid; and that your oratrixes and orator may have in the premises such further and other relief as to your honorable court may

seem proper. May it please your honors to grant to your complainants the writ of subpœna, directed to said Elizabeth N. Bosley, commanding her by a certain day to be in this court to answer the premises, and therein to stand to, and abide by, such order and decree as to your honorable court may seem proper.

CHARLES F. MAYER,
Sol'r for complts.

Exhibit A, referred to in the bill.

James Bosley's will.

In the name of God, amen! I, James Bosley, of the city of Baltimore, merchant, being of sound and disposing mind and memory, do make and declare the following to be my last will and testament, hereby revoking all former wills.

Imprimis. I give, devise, and bequeath to my much beloved and affectionate wife, Mrs. Elizabeth N. Bosley, and to her heirs, executors, administrators and assigns, in absolute right and property, as I now hold the same, my dwelling-house, in the city of Baltimore, fronting on East street, now called Fayette street, and all the buildings and improvements connected therewith and appertaining thereto, and privileges and rights thereto belonging; also the entire lots and premises whereon the said dwelling-house and other buildings and improvements are erected, and as now held and occupied by me.

Item. I also give and bequeath to my said wife, Mrs. Elizabeth N. Bosley, all my stock of wines and other liquors, all my silver plate, all my beds and bedding, table linen, glass and china ware, carriages and carriage horses, all my household furniture, and every other species of personal property (including my domestic servants) belong[ing] to and forming a part of my domestic establishment, and in the use of my family.

Item. I also give, devise, and bequeath unto my said wife, Mrs. Elizabeth N. Bosley, for and during her natural life, all my lots of ground in the city of Baltimore, on which there are improvements, and which yield an income; also, all and singular my annuities and ground rents, arising from lots of ground under lease to different persons in the city of Baltimore, and which I hold by sundry leases made by me, and conveyances from others, duly recorded in Baltimore county court. To have, receive, and take, for her own proper use and benefit, all the rents and profits arising from the houses and improvements on said lots before mentioned, and all and singular the said ground rents and annuities before mentioned, for and during her life, in the same manner as I now collect and receive the same. And, from and after the death of my said wife, I will, devise, and bequeath all the said lots of ground, with the improvements that may be thereon at the time of her death, and all and singular the said ground rents arising from lots leased as aforesaid, and before mentioned in this item, together with the leases

and conveyances under which I hold and am entitled to the same, to the children of my brother, Doctor John Bosley, now residing in Kentucky, and to their heirs and assigns forever, in fee simple, to be equally divided amongst them, share and share alike.

Item. I will and devise that all my servants (except my domestic or house servants) shall be manumitted by my executrix at the expiration of one year after my death; my house servants I desire shall remain with my dear wife till their periods of servitude shall expire, she paying them, respectively, three dollars per month, in addition to what is customarily found them, so long as she shall retain them in her service.

Item. I devise to old Sarah, a black woman who was a domestic in my family, the house and lot she now occupies in the city of Baltimore, to hold during her natural life.

Item. As a testimony of my regard and esteem, I devise and bequeath to Mrs. Sarah Noel, my wife's mother, the sum of one thousand dollars; to Miss Sarah D. Noel, the sum of one thousand dollars; to Miss Margaret Noel, the sum of one thousand dollars, and my gold watch, chain, and seals; to Miss Sarah D. Noel and Miss Anna Maria Brice, each a sum of money sufficient [to buy] each of them a gold watch like that which Mrs. Bosley has, and which Mr. Steward procured for her; and it is my request that he also procure the above two watches for these young ladies.

Item. I give and bequeath to William Martin, who formerly lived in my family as a clerk, in testimony of my esteem for him, the sum of three thousand dollars; and to Rachel Hillen, of the city of Baltimore, in lieu of a house of mine she lately occupied, the sum of eight hundred dollars.

Item. I give, devise, and bequeath all my vacant lots in the city of Baltimore, and all my lands and other real estate in Baltimore, Cecil, and Allegany counties, of this State, all my lands and real estate in Florida, and all my house and lot in Santa Croix, and all my other real estate which I may have elsewhere, to my said beloved wife, Elizabeth N. Bosley, her heirs and assigns, in fee simple; in trust, nevertheless, and it is my will and desire, that as soon as circumstances will permit her after my death, that she sell, on the best terms, and for the best price she can procure, all my said real estates above mentioned; and, on receipt of the purchase money, and not before, to convey to the purchaser and purchasers thereof all my right and title in and to the same, and all the right and title she may derive under this will; and, in case it shall become necessary (of which she shall be the sole judge) to appoint or substitute any person or persons in her place and stead to transact and execute any part or the whole of this trust, she is hereby authorized to do so, without becoming responsible for the fidelity or the manner in which her said agent may act in the premises, or for any default he may be guilty of, as I consider that her own interest in the proceeds [is] a sufficient guarantee that, in making choice of an agent, she will take all the necessary precautions to avoid loss or injury. I desire that, in case there shall be a sufficient time for giving public

notice thereof, the sale of my mills, and other real estate in Cecil, shall be made as early in the month of April, after my death, as can be effected. The nett amount or proceeds of the sales of my real estates above directed to be made, after deducting all commissions and expenses attending the same, which I desire shall be fixed by the rules and regulations adopted in chancery sales, together with all the rest and residue of my estate, real, personal, and mixed, wheresoever the same may be, and not herein before devised to others, I give, devise, and bequeath as follows, to wit: One half thereof to my said wife, Elizabeth N. Bosley, her heirs and assigns, and the other one half thereof to the children of my said brother, Doctor John Bosley, their heirs and assigns, to be divided among them in equal proportions.

Lastly. I hereby appoint my said wife, Elizabeth N. Bosley, sole executrix of this my last will and testament; and it is my desire that she shall not, under any pretence, be obliged to give security for the due execution of the trust, in regard to my real estate, nor accountable for any supposed profits of the said real estate, from the period of my death to the day of sale; if any profits do arise from the same, I devise them to her and her assigns.

In testimony whereof I have hereto set my hand and seal, this eighth day of January, 1828.

JAMES BOSLEY. [SEAL.]

Signed, sealed, and published by the testator, James Bosley, as and for his last will and testament, in our presence, who have hereto subscribed our names as witnesses, at his request, and in his presence, and the presence of each other.

N. BRICE,
CHRIST'R C. LOVE,
H. D. DARDEN.

BALTIMORE COUNTY, *ss.*

On the 18th day of December, 1843, came Nicholas Brice, one of the subscribing witnesses to the aforegoing last will and testament of James Bosley, late of said county, deceased, and made oath on the holy evangely of Almighty God that he did see the testator sign and seal this will; that he heard him publish, pronounce, and declare the same to be his last will and testament; that, at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with Christopher C. Love and H. D. Darden, the other two subscribing witnesses, thereto subscribed their names as witnesses to this will, in his presence, at his request, and in the presence of each other.

Sworn to in open court.

Test:

D. M. PERINE,
Register of wills for Baltimore county.

Codicil.

Whereas I, James Bosley, of the city of Baltimore, and State of Maryland, having made and duly executed my last will and testament in writing, bearing date the eighth day of January, eighteen hundred and twenty-eight, now, I do hereby declare this present * * * writing, to be as a codicil to my said will, and direct the same to be added thereto, and taken as part thereof; and I do hereby give and devise to Rachel Hillen, during the term of her natural life, the house she now occupies in Second street, to be in lieu and place of the bequest of eight hundred dollars (which is hereby revoked) made to her in my said last will and testament.

Secondly. I give and bequeath unto old Sarah, during the term of her natural life, the sum of four dollars per month, in lieu of the house left to her (which is also hereby revoked) in my last will and testament.

Thirdly. I give and devise unto my wife, Elizabeth N. Bosley, and her heirs, all that piece or parcel, land and premises, situate in Baltimore county, and in the vicinity of said city, being my summer residence, and called and known as "Summer Hill," containing about sixteen acres of land, more or less, together with all the stock, negroes, furniture, and all other effects, of whatsoever kind or description, thereon or thereunto belonging.

Fourthly. I give and bequeath unto my said wife, Elizabeth N. Bosley, forever, principal and interest due, or to become due, to me by the Pennsylvania [and] Susquehanna Canal Company, upon bonds, certificate of stock, or other securities whatsoever, and likewise all the said bonds, certificates of stock, or other securities.

Fifthly. It is my will and desire, and I hereby direct, that my said wife, Elizabeth N. Bosley, shall have the power, at all time or times hereafter, according to the best of her discretion, to sell or dispose of, change or alter, in such manner as she shall deem most advisable, all or any part of the property given or devised to her during the term of her natural life, by my said last will and testament. The proceeds thereof to reinvest to the most advantage, and to the best of her judgment, and then to go in and be under the same course of disposition as is expressed in my said last will and testament.

Sixthly. It is also my will and desire, and I hereby direct, that all the property acquired or purchased by me since the date of my said will of the eighth of January, eighteen hundred and twenty-eight, shall be sold, and the proceeds thereof be applied to the payment of the legacies and debts, if any left by me, and the balance thereof to be then equally divided between my wife, Elizabeth N. Bosley, and her sister, Margaret E. Noel.

Lastly. My pew in St. Paul's church, and all other my property, real or personal, and all moneys in bank belonging to me at the time of my decease, I give, devise, and bequeath unto my said wife, Elizabeth N. Bosley, and her heirs forever; and I do ratify and confirm my

said last will in every thing, except where the same is hereby revoked and altered as aforesaid. In witness whereof I hereunto set my hand and seal, on this twenty-first day of January, eighteen hundred and thirty-nine.

JAMES BOSLEY. [SEAL.]

Signed, sealed, published, and declared by the above named *named* James Bosley, of the city of Baltimore, and State of Maryland, as and for a codicil to be added to and considered as part of his last will and testament, in the presence of us, who have subscribed our names as witnesses hereunto in his presence, and the presence of each other.

G. L. DULANY,
JOHN J. LLOYD,
JOHN C. LEGRAND.

BALTIMORE COUNTY, *ss.*

On the 18th day of December, 1843, came Grafton L. Dulany and John J. Lloyd, two of the subscribing witnesses to the aforegoing codicil to the last will and testament of James Bosley, late of said county, deceased, and made oath on the holy evangely of Almighty God that they did see the testator sign and seal this codicil; that they heard him publish, pronounce, and declare the same to be a codicil to his last will and testament; that, at the time of his so doing, he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding; and that they, together with John C. Legrand, the other subscribing witness thereto, subscribed their names as witnesses to this codicil in his presence, at his request, and in the presence of each other.

Sworn to in open court.

Test: D. M. PERINE,
Register of wills for Baltimore county.

In testimony that the aforegoing is a true copy, taken from the original, filed and remaining in the office of the register of wills for Baltimore county:

I hereunto subscribed my name and affix my seal this ninth day of February, in the year of our Lord eighteen hundred and forty-four.

Test: D. M. PERINE,
Register of wills for Baltimore county.

Exhibit B, referred to in the bill.

Exhibit B.

Property wherein there is devised to Elizabeth N. Bosley, a life estate, with remainder in fee to the children of John Bosley.

Lot in said city, conveyed to James Bosley by John White, trustee, by deed dated 26th November, 1824, and recorded as aforesaid, in

liber W. G., No. 173, folio 738, binding on Calvert street, west side, and extending 110 feet westerly.

Other property conveyed by said deed, recorded in W. G., No. 173, folio 738, except parcels conveyed by testator, by deed recorded in W. G., No. 245, folio 502, and to Stewart Brown, by deed dated 29th December, 1829.

Rent reserved by lease to Robert Howard, ($130 yearly,) under deed dated April, 1828, recorded in W. G., No. 193, folio 198, &c.

Lot conveyed to testator, by deed recorded as aforesaid, in liber W. G., No. 206, folio 8, &c., (if at the date of the will it shall appear this ground was improved and productive.)

The lots and rents described in deed recorded as aforesaid, in liber W. G., No. 129, folio 196, &c.

Lots, &c., described in the deeds recorded as aforesaid, in liber W. G., No. 125, folio 26, &c.; and W. G., No. 251, folio 492; W. G., No. 248, folio 396, &c., and W. G.; No. 249, folio 292.

Lots conveyed to testator by Catharine Dorsey and others, by deed dated 5th November, 1812.

Lot conveyed to testator by Elizabeth Lawson, by deed dated 16th December, 1811, and recorded as aforesaid, in liber W. G., No. 117, folio 81, &c.

Lots and rents conveyed to testator by Thompson and others, by deed dated 2d March, 1815, recorded as aforesaid, in liber W. G., No. 130, folio 390, &c., except the property conveyed to Noah Walker, by deed recorded as aforesaid, in liber W. G., No. 221, folio 451, &c.

A lot and improvements on Market space, in the city of Baltimore.

Three lots and improvements situated on the west side of Holliday street, nearly opposite City Hall.

A lot and improvements on Market space, in Baltimore.

A lot of ground and improvements on the east side of Calvert street, between Saratoga street and Lexington street.

Property subject to sale under the will and codicil, and the proceeds of sale whereof are to be divided between the testator's widow of the one part, and the children of John Bosley, and their heirs.

Lands in Baltimore county, being the tracts (or parts of the tracts) called, respectively, "Mount Joy," and "United Friendship," and "Parishe's Range," and "Parishe's Fear," and "Wooden's Venture," and "Addition to Wooden's Venture," and "Marsh's Victory enlarged," and "Fertile Marsh," and "Spark's Folly," and "Lots No. 74, No. 78, and No. 80 of my Lady's Manor," conveyed to the testator by deeds respectively recorded in the land records of Baltimore county, in liber W. G., No. 149, folio 90, &c.; No. 170, folio 198, &c.; No. 175, folio 249, &c.; No. 178, folio 247, &c.; No. 178, folio 249, &c.; No. 178, folio 418, &c.; No. 180, folio 481, &c.; No. 184, folio 75, &c.; No. 186, folio 626, &c.; No. 187, folio 291, &c.; No. 138, folio 35, &c., and likewise "Sutton's Delight," also situate in Baltimore county.

Sundry tracts of land in Allegany county, in Maryland; sundry tracts of land situate in the State of Georgia; a lot of ground on the Susquehanna canal, in Cecil county, Maryland.

A lot of ground on Market street, (Fell's Point,) now Broadway, and Apple alley.

A lot of ground situate on Madison street, (near the western boundary of Baltimore."

The lot of ground and improvements, mentioned in the will as occupied by old Sarah.

A lot and improvements mentioned in the codicil as devised to Rachel Hillen for life.

Sundry lands in Cecil county, in Maryland.

Rule security for costs.

And now here, at this day, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-six, the said Elizabeth N. Bosley appears in court here, by Charles Nicols her solicitor; and thereupon, on motion of the said Elizabeth N. Bosley, by her solicitor as aforesaid, it is ruled by the court here, that the said Mary Lucinda Bosley and others give security for costs.

Afterwards, to wit, on the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-seven, the said Mary Lucinda Bosely and others, the complainants, in obedience to the foregoing rule, entered security for costs in form following, to wit:

In equity, in the circuit court, U. S., for Maryland district.

MARY L. BOSLEY and others
vs.
ELIZABETH N. BOSLEY.

Security for costs.

The clerk of the circuit court will enter me as security for costs in the above case.

WM. S. BOSLEY.

23d March, 1847.

Afterwards, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and forty-seven, the said Elizabeth N. Bosley, by her solicitor aforesaid, files in the circuit court here her answer to the bill of complaint of the said Mary Lucinda Bosley and others, in the words and of the tenor following, to wit:

Answer.

The answer of Elizabeth N. Bosley to the bill of complaint of Mary Lucinda Bosley, Henry Bosley, Mary Jane Davis, and Sally Ann Davis, infants, citizens of the State of Missouri, by their guardian and next friend John Bosley, a citizen of the said State, John Bosley, jun., and James and Mildred Bosley, children of John Bosley, senior, aforesaid, against her, in the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, sitting in chancery, exhibited.

This respondent, now and at all times hereafter, saving and reserving to herself all and all manner of benefit and advantage of exception that may or can be had or taken to the manifold errors, imperfections, uncertainties, and misstatements in said bill of complaint contained and stated; nevertheless, for answer to the same, or to so much and such parts thereof as she is advised it is in anywise necessary or material for her to make answer unto, she answering, says:

That she admits that the citizenship of the complainants, and that of herself, are as they are stated to be in said bill of complaint; that James Bosley, late of the city of Baltimore, deceased, died leaving a will and testament and codicil thereto, which were duly proved and recorded as stated in said bill of complaint, and that the copy thereof exhibited as a part of said bill of complaint, and marked exhibit A, is, to the best of her knowledge and belief, a true copy thereof.

And this respondent further admits, that by said will she was and is made sole executrix thereof, and that accordingly letters testamentary to her, as such executrix, have issued to her from the orphan's court of Baltimore county; and she avers that, in due conformity with the laws of the State of Maryland, she has returned to said court a full and perfect inventory of all the personal estate belonging to said deceased at the time of his death, which has come into her possession or knowledge, and she knows of no other belonging to said deceased; and that she has been, and still is, held accountable by said court for the due administration and settlement thereof, and she hopes that she may have the same benefit of this averment as if she had claimed such benefit by any other mode of pleading.

And this respondent further answering says, that she admits that by the said will of said testator, dated the eighth day of January, eighteen hundred and twenty-eight, various real estate with all the rents and profits arising therefrom is devised to this respondent, widow of the said testator, during her natural life, with remainder to the children of John Bosley, (the above named next friend of the complainants,) and the heirs of said children; and that by the codicil to said will, dated the twenty-first day of January, eighteen hundred and thirty-nine, a power is given to this respondent at all time or times hereafter, according to the best of her discretion, to sell or dispose of, change or alter, in such manner as she shall deem most advisable, all or any part of said property given or devised to her during the term of her natural life by said

last will, and the proceeds thereof to reinvest to the most advantage, and to the best of her judgment; and then to go in and be under the same course of disposition as expressed in said last will and testament. And this respondent hopes that she may have the benefit of this objection, and all others relied on, to the prayer of said complainants for an account of the rents and profits of said devised real estate, and an interference with the power solely and exclusively vested in her to sell or dispose of, change, or alter the same according to her judgment and discretion, as if she had demurred to the same.

And this respondent further answering says, that she admits that by the said will of the eighth of January, eighteen hundred and twenty-eight, other real estate is devised to be sold and the nett proceeds of the sales thereof, together with all the rest and residue of testator's estate, real, personal, and mixed, wheresoever the same may be, and not before devised to others, are given, devised, and bequeathed, one-half thereof to this respondent, her heirs and assigns, and the other one-half thereof to the children of the said John Bosley, their heirs and assigns, to be divided among them in equal portions; and this respondent admits that the codicil of the twenty-first of January, eighteen hundred and thirty-nine, after giving to the "old black woman, Sarah," a pecuniary allowance in place of the real property the will had given her, and devising to Rachael Kitten for life a piece of ground in place of the money devised to her by the will, devises as follows, to wit, "lastly, my pew in St. Paul's church, and all other my property, real or personal, and all moneys in bank belonging to me at the time of my decease, I give, devise, and bequeath unto my said wife, Elizabeth N. Bosley and her heirs forever, and I also ratify and confirm my said will in every thing, except where the same is hereby revoked and altered as aforesaid."

And this respondent further admits that, as she is advised, she has given, and gives the construction to the said devises and bequests in said will and codicil, as is stated in said bill of complaint; that she does, and she hopes that she may have the benefit of this objection, to so much of said bill of complaint as claims any rights under a contrary construction of said devises, as if she had specially and formerly demurred thereto. And this respondent further answering says, that as to so much of said bill of complaint as prays for the appointment by this honorable court of a trustee for the sale of the real estate mentioned as aforesaid by the said will of the eighth of January, eighteen hundred and twenty-eight, to be sold, and the nett proceeds, together with the rest and residue of the real and personal property to be divided between this respondent and the children of John Bosley, that even if that direction be preserved in its full force and unimpaired by the corresponding residuary clause in said codicil; yet that the trust by the said will is personal and exclusive to this respondent, and who also as executrix has a right and power to sell the same, and by the laws of the State of Maryland must report the sales thereof and be accountable to the orphan's court of Baltimore county therefor; and this re

spondent prays that she may have the same benefit of this objection, thus relied upon in this answer, as if the same had been specially and formerly, or otherwise, brought before this court.

And this respondent further answering says, that she admits that by the said codicil all the property acquired or purchased by said testator since the date of the said will of the eighth of January, eighteen hundred and twenty-eight, was devised to be sold, and the proceeds thereof to be applied to the payment of the legacies and debts, and the balance to be divided between this respondent and her sister Margaret E. Noel; and she further admits that she has been, and is in the possession and enjoyment of all the real estate left by said testator at his death, with the exception of the land lying in Allegany county, Maryland, and that lying in the State of Georgia, of which she has not as yet had the possession.

And this respondent further answering says, that she denies it to be true that she ever did, or does now, refuse to give to these complainants any information in her possession of the extent and character of the property left by said testator at his death; but, on the contrary, she avers that in the month of June, eighteen hundred and forty-five, eminent counsel of the bar of Missouri visited Baltimore, as the agent and counsel of these complainants, for the very purpose of obtaining the said information, and that he was so possessed in full of it by the counsel and friend of this respondent by her authority and request, and who had all the materials in his possession to give said information; and that said agent was furnished with a list, and told of all the real and leasehold estate of which this respondent had any knowledge, and was informed that he would find a full inventory of the personal estate, inclusive of that which was specifically bequeathed to this respondent, among the records of the orphan's court for Baltimore county, although he was at the same time apprized of the rights which this respondent claimed under the construction of said will and codicil as given thereto by the legal advisers, and as is still herein asserted. And this respondent herewith files a classified list of the real and leasehold estate belonging to the said testator at the time of his death, and of which she has any knowledge, marked "Respondent's exhibit A," and which she prays may be taken as part of this her answer.

Without this, that there is any other matter or thing in the said bill of complaint contained, material or effectual for this respondent to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this respondent; and she prays hence to be dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. NICOLS,
Sol'r for respondent.

STATE OF MARYLAND,
City of Baltimore, to wit:

Be it remembered, that on this twenty-ninth day of March, in the year eighteen hundred and forty-seven, before the subscriber, a justice of the peace for said State, in and for said city, personally appeared Elizabeth N. Bosley, the party named as respondent in the foregoing answer, and made oath on the holy evangely of Almighty God that the matters and things set forth in the foregoing answer are just and true to the best of her knowledge and belief. Sworn before

WILLIAM WARFIELD.

Respondent's exhibit A, referred to in the answer.

Respondent's exhibit A.

A list of all the property, real and leasehold, known to this respondent as belonging to James Bosley at the time of his decease, arranged in conformity with the devises thereof in his last will and codicil, under the following classification, viz:

1st class—Life estate.

Containing the property devised to Elizabeth N. Bosley by the will for the term of her natural life, with the rents and profits thereof, and with a power under the codicil, at her discretion and under her own judgment, to sell or dispose of, alter or change, all or any part thereof, and re-invest the proceeds, and, after her death, with remainder in fee to the children of Dr. John Bosley.

1st. A ground rent of $130 on Ensor street, conveyed by Henry Thompson and others, heirs of Daniel Bowley, to James Bosley, by deed dated 2d March, 1815, recorded in liber W. G., No. 130, folio 390; and also by a deed from Charles Wirgman and wife to the same, dated 6th December, 1815, recorded in liber W. G., No. 133, fol. 575.

2d. A ground rent of $75, created by James Bosley, on 25 feet front by 65 feet deep, on a part of a lot on Smith's wharf, by lease to Robert Howard, dated 18th April, 1828, recorded in liber W. G., No. 193, fol. 198. Deed for the whole of the lot from Samuel Moale, trustee, to James Bosley, dated 14th May, 1827, recorded in liber W. G., No. 186, fol. 276.

3d. A house and lot on Second street, conveyed by Catharine Dorsey and others to James Bosley, by deed dated 5th November, 1812, liber W. G., No. 120, fol. 589.

4th. A lot of ground 51 feet front on St. Paul's street, corner of Saratoga street, (improved with two three-story dwellings) and

5th. A lot No. 68 on the west side of Calvert street, 20 feet northerly from north side of St. Paul's street, (now Saratoga street,) having 27 feet front, conveyed by John White, trustee, to J. Bosley, by deed dated 26th Nov., 1824, recorded in liber W. G., No. 173, fol. 738.

6th. Three lots of ground on Holliday street, conveyed by Elizabeth Lawson to J. Bosley, by deed dated 16th Dec'r, 1811, lib. W. G., No. 117, fol. 81, &c., and 7 feet of the adjoining lot conveyed to J. Bosley by S. & W. Fernandis, on 31st July, 1812, lib. W. G., No. 119, fol. 453. The whole improved with 4 two-story dwellings.

7th. A ground rent of $100 on lots 72 and 73, east side of Jones' Falls, on Liberty and McElderry streets, conveyed by Owen Dorsey to J. Bosley, on 15th August, 1814, liber W. G., No. 129, fol. 196.

2d Class.—Subsequent.

Containing property acquired or purchased by James Bosley subsequent to the date of his will of the 8th January, 1828, directed to be sold for the payment of debts and legacies, and the balance to be divided between E. N. Bosley and her sister, Margaret E. Noel, (now Wyatt.)

1. A lot No. 210 on the west side of Centre Market space, purchased by J. Bosley on 6th May, 1831, from John Glenn, trustee, under a decree of Baltimore county court, sitting in equity, dated 11th April, 1831, in the case of Bosley vs. Bosley.

NOTE.—This property has been sold to Leon. Frank by this respondent, and the sale reported to the orphan's court for Baltimore county, under *under* the act of assembly of Maryland, 1831, chap. 315, and finally ratified thereby. Amount of sale $5,100.

2. A tract of land called Eslington, in Baltimore county, containing 380 acres, more or less, conveyed by Charles Worthington to J. Bosley, on 18th March, 1835. Lib. T. K., No. 246, fol. 289.

Note.—This land was sold by J. Bosley to Frederick Brosimme, who gave his notes for the purchase money, which have been returned to the orphan's court of Baltimore county among the list of debts due deceased. A vendor's lien still remains on said land.

3. A lot of ground and two-story dwelling thereon, lease-hold, on St. Paul's street, near Franklin street. Deed of assignment from Alexander B. Harrison and Thomas P. Harrison, executors of Jonathan Harrison, to J. Bosley, dated 5th November, 1831. Lib. W. G., No. 215, fol. 291.

Note.—Included in the inventory returned by this respondent to the said orphan's court.

4. Do. on do., lease-hold. Deed of assignment to J. Bosley from the president and directors of the Union Bank of Maryland, dated 8th June, 1832. Lib. A. J., No. 219, fol. 11.

Note.—Also returned in said inventory

5. A lot of ground No. 69, binding 27 feet front on the west side of Calvert street, 47 feet north from the corner of Saratoga street, (formerly St. Paul's street.) Deed to J. Bosley ftom the Baltimore Female Orphan Asylum, dated 28th May, 1836. Lib. T. K., No. 260, fol. 63.

6. Do. on do., 20 feet front at the north corner of Saratoga and Calvert streets. Deed to J. Bosley from George Earnest and wife, dated 3d May, 1838, on record in Baltimore county land records, in Lib. T. K., No. 279, fol. 541.

7. A part of a tract of land called Newington, containing 6 acres 3 roods 38 perches, on the west side of Madison street. Deed to J. Bosley from John Carrere and wife, dated 29th January, 1833. Lib. A. J., No. 224, fol. 527, &c.

Note.—This lot was leased by J. Bosley for 99 years, renewable, &c., to Alfred H. Reip, for $250 per annum.

8 A part of Spicer's inheritance, containing 2 roods and 20 perches, on Madison street, near the Female Charity school. Deed to J. Bosley from Sarah McCulloh, dated 24th March, 1834. Lib. T. K., No. 240, fol. 282.

Note.—Sold by E. N. Bosley, and conveyed to Alonzo Lilly, 25th October, 1845. Lib. A. D. B., No. 358, fol. 481. Sale reported to orphan's court for Baltimore county and ratified thereby. Amount of sale $150.

9. A lot containing 1 A. 30 $\frac{7}{10}$ perches on the Susquehanna canal, Cecil county. Deed to J. Bosley from John Sterrett, dated 6th July, 1832. Lib. J. S., No. 31, fol. 95.

10. A piece of land called "Alluvion" in Hartford county. Patent from the State of Maryland to J. Bosley and George Gale, dated 21st December, 1838, for 460 A. 2 R. 23 P., recorded in Lib. G. S. B., No. 3, fol. 329. (A shoal in the Chesapeake bay.)

3*d class.* *Devises to E. N. Bosley, containing property specifically devised to E. N. Bosley in fee.*

1. A lot and dwelling-house on East Fayette street, lease-hold. Deed to J. Bosley from Robert Oliver and others, dated 25th March, 1822. Lib. W. G., No. 163, fol. 57.

Note-—Returned in the inventory to the orphan's court.

2. A part of Parish's Fear, containing 14 A., 3 R., 16 Per., called "Summer Hill," in the codicil. Deed to J. Bosley from William Patterson and others, dated 24th November, 1825. Lib. W. G., No. 178, fol. 418, &c.

3. Seven lots on the Susquehanna Canal, Cecil county. Deed to J. Bosley from John Paul, dated 12th July, 1827. Lib. J. S., No. 25, fol. 9, &c.

Note. This property was sold by J. Bosley in 1837 to the Pennsylvania Susquehannah Canal Company, who gave their bonds for the payment of the purchase money, a vendor's lien being reserved as a security; which bonds and security were devised and bequeathed by the codicil to E. N. Bosley. The bonds have been returned in the inventory to the orphan's court, and the property sold, under the lien, by a decree of the chancery court, but did not yield enough to pay the interest due, and nothing on the principal debt.

4th class. Residuary.

Containing property which, by the will was directed to be sold, and the proceeds thereof, together with the rest and residue of the estate, real and personal and mixed, to be divided between E. N. Bosley and the children of Dr. John Bosley, and which, as this respondent contends, now vests in her absolutely, under the residuary clause of the codicil.

1. Part of Parish's Range, 19 acres, in Baltimore county. Deed to J. Bosley from Henry W. Rogers, dated 9th May, 1826. Lib. W. G., No. 180, fol. 485.

2. Part of do. in do., said to contain 47 acres, more or less. Deed from Alexander Perdriel to J. Bosley, dated 30th May, 1827. Lib. W. G., No. 186, fol. 626, &c.

Note. Of these two pieces of land, J. Bosley, by agreement under seal, agreed to lease for 99 years, renewable, &c., to Horatio G. Armstrong, on 15th August, 1842, fifty acres, more or less, at the rent of $210 per annum. Which lease was, after the decease of J. Bosley, executed by this respondent on the 18th January, 1845. Lib. T. K., No. 349, fol. 514.

The remainder of the two pieces, being 10 acres, more or less, were sold by this respondent to Dr. P. McCauley, for $75 per acre, recorded in Lib. T. K., No. 348, fol. 84.

3. An undivided moiety of two lots (unimproved) on Dulany street and Apple alley. Deed to J. Bosley from James Emreinsen, dated 26th March, 1808. Lib. W. G., No. 96, fol. 673.

Note. These lots were sold under a decree of Baltimore county court, sitting in equity, in the case of this respondent against the heirs of Waters, entitled to the other moiety or undivided half part, in the month of January, 1845, and from which this respondent received about $456 90.

4. A house and lot on Second street, left for life in the codicil to Rachel Kilten or Hillen. The fee left undisposed of. Leasehold. Deed from Philip Sumwalt to J. Bosley, dated 11th April, 1810. Lib. W. G., No. 107, fol. 145

5. A lot on North street, devised by the will to "Old Sarah," revoked by the codicil and left undisposed of.

Note. An agreement under seal on 21st February, 1840, was made by J. Bosley with William Hollins, now deceased, to lease this lot for 99 years, renewable, &c., at the rent of $225 per annum. Hollins has the possession, but the lease has never been executed.

6. Twelve hundred acres of land, in Alleghany county, Maryland. Deed to J. Bosley from T. Ellicott and J. Meredith, trustees, and S. Smith, dated 18th May, 1827. Lib. A. B. N. N., fol. 438, &c.

Note. 400 *hundred* acres sold by J. Bosley, of the remaining 800 acres this respondent has not yet had the possession.

7. Land in Franklin county, Georgia, about 3053 acres. Deed to

J. Bosley from J. Meredith and T. Ellicott, trustees, dated 15th May, 1827. Recorded in book B. B., fol. 132, &c.

Note. Of this land J. Bosley made repeated efforts, but without success, to obtain the possession, nor has this respondent ever had it.

8. An unimproved lot of ground in the city of Annapolis. Deed to J. Bosley from Thomas G. Morgan and John Philips, of John, dated 22d December, 1825, recorded in lib. W. S. G., No. 11, fol. 454 and 455, one of the land record books of Anne Arundel county.

And now here, at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and forty-seven, come again into the circuit court here the parties aforesaid, by their solicitors aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their solicitors aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

And now here, at this day, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-seven, come again into the circuit court here the parties aforesaid, by their solicitors aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here, is further continued until the first Monday in April next.

And now here, at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and forty-eight, come again into the circuit court here the parties aforesaid, by their solicitors aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in November next.

And now here, at this day, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-eight, come again into the circuit court here the parties aforesaid, by their solicitors aforesaid.

And the parties aforesaid, by their solicitors aforesaid, file in the circuit here an agreement in the words following, to wit:

Agreement.

BOSLEY and others
vs.
BOSLEY.

In the circuit court of the United States, Maryland district.

It is admitted that the plaintiffs have truly stated themselves as children and heirs of children of John Bosley, mentioned in the will in this case; and further, that there are no debts of the testator remaining to

be paid, and none upon the will as filed or made the subject of objection.

CHARLES NICOLS,
Solicitor for respondent.
CHARLES F. MAYER,
For plaintiffs.

And now here, at this day, to wit, the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-eight, the court here filed the following opinion, and passed the following order, to wit:

Opinion of the court.

BOSLEYS
vs.
BOSLEY.

The bill in this case seeks the execution of a trust supposed to be created by the will and codicil of the late James Bosley, deceased, in favor of the complainants; and if there be such a trust, there can be no doubt of the jurisdiction of the court, whether the subject matter of the trust consists of real or personal property. The will was made in 1828, the codicil in 1839. By his will, the testator devised his vacant unimproved lots in the city of Baltimore, his lands and other real estate in Baltimore, Cecil, and Alleghany counties, and all his lands and real estate in Florida, and his house in Santa Croix, together with all the residue of his real and personal property elsewhere, to his wife, in trust to sell the same, and after payment of expenses, as mentioned in the will, the proceeds to be equally divided between Mrs. Bosley and the children of his brother, who are the complainants in this case. The testator, in his lifetime, sold his lands in Cecil county, and a part of his lands in Alleghany county, and contracted to lease for ninety-nine years, renewable forever, a portion of his lands in Baltimore county, which contract has since been carried into execution by Mrs. Bosley. It does not appear that he had any lands in Florida at the time of his death. His house at St. Croix was also sold in his lifetime. By his codicil he, among other dispositions of his property, devised his country seat in Baltimore county, with the personal property upon it, to Mrs. Bosley, and also disposed of the money arising from the sale of his lands in cecil county; and after revoking some legacies given by his will, and giving others in lieu of them, he devised "his pew in St. Paul's Church, and all other his property, real or personal, and all moneys in bank belonging to him at the time of his decease, to his wife; and ratified and confirmed his will in every thing, except where the same was revoked and altered by the codicil.

The difficulty in the case arises from this residuary clause in the codicil. Does it revoke the residuary devise in the will? Undoubtedly

the general residuary devise in the will is revoked; for the will is republished by the codicil, and consequently speaks at the same time. And as the will and the codicil must be taken together, and construed with reference to each other, unless the clause in the will is revoked, there would be two devises of the residuum of his estate inconsistent with each other—one devising it in trust, as above mentioned, the other absolutely to Mrs. Bosley.

But the devise of the property specifically mentioned in the will is not revoked by the clause in the codicil. The words "all other my property," means not merely property other than that devised by the codicil, but other than that devised either by the will or codicil. These two instruments form but one disposition of his estate, and must always be construed together. But a small portion, however, of the property devised in trust, as above mentioned, now remains subject to the trust. A large part, as we have already said, was disposed by the testator in his lifetime, and other parts of it are specifically devised by the codicil in a different manner. According to the exhibit which accompanies the answer of the defendant, and which we do not understand to be disputed, (and which, indeed, as the case now stands, must be taken as true,) nothing remains of the trust property upon which the will can operate, but the ten acres sold by Mrs. Bosley to Doctor McCauley, lying in Baltimore county, and the one-half of the vacant lot in the city of Baltimore, sold by decree of Baltimore county court sitting in equity, and the residue of the lands in Alleghany county. To these portions of the property, the money arising from the sale belong to the trust created by the bill. The papers in the case must, therefore, be referred to a master to state the account between the complainants and the trustee, preparatory to a final decree.

There is no specific devise of personal property for this trust, and if there was any property of that description left by the testator, beyond that particularly mentioned in his will and codicil, it passed by the residuary clause in the codicil to Mrs. Bosley; and as the complainants have no interest in it, they are not entitled to an account, either as to the amount or the mode in which it has been administered.

As regards the prayer for the appointment of a new trustee, we see no ground for removing the one selected by the testator. Every thing that the complainants have a right to ask has been fully and promptly disclosed in the answer, and their interests, we believe, will be as safe in her hands, as in those of any other trustee that could be selected by the court.

Order of court.

BOSLEYS vs. BOSLEY. } November term, 1848.

Ordered by the court, that the papers in this case be referred to John Carrere, a master in chancery, to state an account between the com-

plainants and defendant according to the principles laid down by the court in the opinion filed at the present term, either party being at liberty to offer evidence before the master—the complainants to show, if they can, that there is other property liable to the trust, upon the principles stated in the opinion of the court; and the defendant to show, if she can, that there is any fact, not yet before the court, which would except from the trust the property of which the court have directed an account to be taken.

R. B. TANEY,
U. S. HEATH.

Whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here, is further continued until the first Monday in April next. And now here, at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and forty-nine, come again into the circuit court here the parties aforesaid, by their solicitors aforesaid.

Afterwards, to wit, on the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and forty-nine, the master in chancery filed in the circuit court here a report and account in the words and figures following, to wit:

MARY LUCINDA BOSLEY and others
vs.
ELIZABETH N. BOSLEY.

In the circuit court of the United States, for the 4th circuit and district of Maryland. To the honorable the judges of the circuit court aforesaid.

Master's report.

In pursuance of an order of the court, passed in the above case, the master, after notice, &c., has stated the within account in conformity with the opinion of the court.

In said account the master has charged the trustee, Mrs. Elizabeth N. Bosley, with one-half of the proceeds of the sale, made by her to Dr. McCauley, and one-half of the amount received by her from the sale of the trust estate made under decree of Baltimore county court, in equity, the same being the proportion to which the complainants, to whom he has allotted the same, are entitled under the will of James Bosley. The interest on these sums he has computed from the time fixed by the will. The whole amount then ascertained the master has allowed in equal proportions to the four children of Dr. John Bosley, living at the time of the death of the testator, or to their heirs.

No evidence was offered by either party, except the letter (herewith returned) addressed to the master and admitted as proof. The solicitor for the complainants proposes to file as evidence in the case the lease from the defendant to Horatio G. Armstrong; as his account would

not have been varied, had it been produced, the master now returns his account.

All of which is respectfully submitted.

JOHN CARRERE.

Baltimore, 27th April, 1849.

Mrs. Elizabeth N. Bosley, trustee under the will of James Bosley, deceased, in account with John Bosley and others, co-devisees under said will.

DR.

To the complainant, John Bosley, for ¼ of ½ of the whole proceeds of the sales made or received from the trust estate	$189 20
Complainant, Henry Bosley, for the same	189 20
Complainants, Mary Jane and Sally Ann Davis, for the same	189 20
Complainant, Mary Lucinda Bosley, for the same	189 20
	$756 81

CR.

1844.	
Dec. 19. By one-half of the amount of sale to Dr. McCauley, (the whole amount being $750)	$375 00
Interest on the same to the 27th April, 1849	97 93
1845.	
April 11. By one-half of the sale of two lots on Dulany street and Apple alley, (whole amount $456 90)	228 45
Interest on the same to the 27th April, 1849	55 43
	$756 81

Letter referred to in the master's report.

To JOHN CARRERE, esquire,
Master in chancery of cir. ct., U. S., 4th circuit.

DEAR SIR: Of the property sold by Mrs. E. N. Bosley, and for which she is, under the opinion of the circuit court, filed in the case against her on the part of Mary Lucinda Bosley and others, responsible to the said complainants to the extent of one-half, there was received by her for the 10 acres of land sold to Dr. McCauley, the sum of $750 on the 19th of December, 1844, and for the proportions of the proceeds of the sale of the 2 unimproved lots on Dulany street and Apple alley she was paid, as entitled to the ½ of an undivided moiety, by the trustee for the sale under a decree of Baltimore county court in equity, the sum of $456 90 on the 11th of April, 1845, making her liable for the ¼ of $750, and the ½ of $456 90 as the principal sums.

I have thought it would be of service to you to furnish you with the above statement, in order that you may be enabled to state the account

under the order of the court, as soon as practicable, so that there may be further action in the premises by the court at its present term.

Truly, yours,

CHAS. NICOLS,
Solicitor for Mrs. E. N. Bosley.

April 12th, 1849.

The above statement is admitted as testimony in the above mentioned cause.

CHARLES F. MAYER,
Solicitor for plaintiffs.

23d April, 1849.

And the said respondent, by her solicitor aforesaid, files in the circuit court here a petition in the words and of the tenor following, to wit:

Petition of the respondent for instructions.

BOSLEY ET AL.
vs.
ELIZABETH N. BOSLEY.

On the equity side of the circuit court of the United States, for the fourth circuit and district of Maryland.

The respondent in this case, by her counsel, prays the honorable court to give her instructions as to what is to be done by her in relation to the residue of the land in Alleghany county, Maryland, mentioned in the proceedings as not being in her possession, and which, in the opinion of the court filed in said case, falls under the trust created by the terms of the will of James Bosley, the testator.

CHAS. NICOLS,
Solicitor for respondent.

Afterwards, to wit, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-nine, the complainants, by their solicitor aforesaid, file in the circuit court here a petition, in the words following, to wit:

Petition of the plaintiffs.

MARY LUCINDA BOSLEY and others
vs.
ELIZABETH N. BOSLEY.

In the circuit court of the United States, for the fourth circuit for the Maryland district.

The plaintiffs in this cause respectfully submit to the court a copy, duly authenticated, of the lease of Elizabeth N. Bosley to Horatio G.

Armstrong, which the defendant's answer refers to, and which, as so referred to and described, your honorable court deemed to be operative as a revocation of the devise to the plaintiffs of their interests in the land so leased.

The plaintiffs now, however, ask of your honorable court the consideration of said lease, of which a copy, marked A, as part of this petition, is here presented, to the end that they may be allowed the benefit of said devise, and that said lease may be declared not to work a revocation as aforesaid, save only that the plaintiffs shall be adjudged to have their interest, as indicated by the will, in the reversion and rent, in place of the land, while the lease shall exist, and in the land afterwards.

The plaintiffs therefore pray that the case may be remanded to the master, with directions to state an account conformably to this prayer; and that such further and other order and relief be granted in the premises as to the court may seem proper.

CHARLES F. MAYER,
Solicitor for plaintiffs.

Lease from E. N. Bosley to H. G. Armstrong.

Elizabeth N. Bosley, lease to Horatio G. Armstrong.

This indenture, made this eighteenth day of January, in the year of our Lord eighteen hundred and forty-five, between Elizabeth N. Bosley, widow, of the city of Baltimore, and State of Maryland, of the one part, and Horatio G. Armstrong, of the same city and State aforesaid, of the other part; whereas James Bosley, late of Baltimore county, deceased, did heretofore in his lifetime, by his certain bond of conveyance, bearing date the fifteenth day of August, eighteen hundred and forty-two, covenant and agree, to and with the said Horatio G. Armstrong, his executors, administrators, and assigns, that for the consideration of the payment of the sum of two thousand dollars, lawful money, payable in the manner and at the times set forth therein, together with payment of the annual ground rent hereinafter reserved and mentioned, demise and leased, unto the said Horatio G. Armstrong, his executors, administrators, and assigns, for the term of ninety-nine years, renewable forever, all that piece, tract, and parcel of land, situate, lying, and being in Baltimore county, and hereinafter more particularly described, for and at the annual grant or sum of two hundred and ten dollars, lawful money aforesaid, payable semi-annually, with the right of extinguishing the said annual ground rent upon the payment of the sum of three thousand five hundred dollars at any time thereafter to the said James Bosley, his heirs and assigns, as by the said bond of conveyance, now in the possession of the said Horatio G. Armstrong, will upon reference more fully and at large appear:

And whereas the said James Bosley, after the execution and delivery of the above recited bond of conveyance, to wit, on or about the sixth

day of December, eighteen hundred and forty-three, departed this life without having made and executed a lease of the said land and premises above referred to to the said Horatio G. Armstrong, agreeably to the provisions therein contained; and whereas the said Horatio G. Armstrong did, in the lifetime of the said James Bosley, pay to him the sum of one thousand dollars, being the amount contained in the first promissory note contained and described in the said bond of conveyance aforesaid, with all the interest due thereon, agreeably to the provisions thereof, will appear:

And whereas the said James Bosley, before his said decease, made, executed, and published his last will and testament and codicil thereto, which has been duly proved and recorded according to law, in the office of the register of wills for Baltimore county, will upon reference more fully and at large appear:

And whereas, by the said last will and testament of the said James Bosley and the codicil thereto, the said piece, tract, and parcel of land and premises so as aforesaid contained and described [in] the said above recited bond of conveyance, and hereinafter described as aforesaid, has become by devise the property and estate of the said Elizabeth N. Bosley, who is capable in law of making a lease of the same to the said Horatio G. Armstrong, agreeably to the provisions of the said bond of conveyance aforesaid, as by a further reference to the said last will and testament aforesaid will more fully appear:

And whereas the said Horatio G. Armstrong hath paid to the said Elizabeth N. Bosley, the devisee aforesaid, the sum of one thousand dollars, being the residue of the said sum of two thousand dollars, before mentioned and contained in the two remaining promissory notes of five hundred dollars each, described and contained in the said bond of conveyance aforesaid, with all the interest thereon, will appear:

And whereas the said Elizabeth N. Bosley hath, in consequence of said payments above recited, agreeably to the provisions of the said bond of conveyance aforesaid by the said Horatio G. Armstrong, hath made and executed these presents:

Now, this indenture witnesseth, that the said Elizabeth N. Bosley, for and in consideration of the premises, and for the further consideration of the payment of the rents, and performance of the covenants, clauses, and agreements hereinafter mentioned and reserved, on the part of the said Horatio G. Armstrong, his executors, administrators, and assigns, to be paid, observed, kept, and performed, hath demised, granted, leased, and to farm letten, and by these presents do demise, grant, lease, and to farm let, unto him, the said Horatio G. Armstrong, his executors, administrators, and assigns, all that the aforegoing tract, piece, and parcel of land and premises, so as aforesaid more particularly mentioned and referred to, and contained in the above in part recited bond of conveyance from the said James Bosley to the said Horatio G. Armstrong, lying and being in Baltimore county; being part of a tract of land called Strawberry hill; being part of a tract of land called Parish's range, contained and de-

scribed within the following metes and bounds, courses and distances, that is to say: Beginning for the same at a stone marked 146, planted on the south edge of the new cut Liberty town road, it being a corner of lot No. 145 of the Baltimore company's land, and running thence north sixty-seven and a half degrees west, one hundred and thirty-three and one-fourth perches, to a stone planted in said line; then south ten degrees and thirty-seven minutes east, one hundred perches and one-fourth of a perch; thence east ninety-one and a quarter perches to a stone planted in said line; and thence with a straight line to the place of beginning; containing and laid out for fifty acres of land, more or less, the same being a part of the pieces and parcels of land heretofore conveyed and sold by Henry W. Rogers to the said James Bosley, by indenture bearing date on or about the ninth day of May, eighteen hundred and twenty-six, duly recorded according to law, among the land records of Baltimore county court, in liber W. G., No. 180, folio 485, &c.; and by indenture from Alexander Perdrict to the said James Bosley, bearing date on or about the thirtieth day of May, eighteen hundred and twenty-seven, duly recorded according to law among the said land records of Baltimore county court, in liber W. G., No 180, folio 622, &c., will upon reference more fully and at large appear; together with all and singular the buildings and improvements thereon made and erected, ways, roads, waters, water courses, rights, liberties, privileges, easements, and advantages to the said piece, tract, and parcel of land belonging or in any wise appertaining; to have and to hold all that the aforegoing piece, tract, and parcel of land and premises so as aforesaid more particularly mentioned and described, and contained in the above in part recited bond of conveyance from the said James Bosley to the said Horatio G. Armstrong, and indentures aforesaid, and hereby demised and leased, or intended hereby so to be, with all and every of their appurtenances thereto belonging, unto the said Horatio G. Armstrong, his executors, administrators, and assigns, from the fifteenth day of August, eighteen hundred and forty-four, for and during, and until the full end and term of ninety-nine years from thence next ensuing, fully to be complete and ended; yielding and paying therefor yearly, and every year during the said term, to the said Elizabeth N. Bosley, her heirs and assigns, the yearly rent or sum of two hundred and ten dollars lawful money of the United States, in two equal half-yearly payments of one hundred and five dollars, on the fifteenth day of February and August in each and every year during the continuance of this present demise, and that free and clear of all deductions for taxes and assessments of every kind and nature whatsoever, levied, charged, or assessed, or which shall hereafter be levied, charged, or assessed, on the said piece, tract, and parcel of land and premises aforesaid, or on the rent issuing therefrom; and if it shall happen that the said yearly rent or sum of two hundred and ten dollars, or any part thereof, shall be in arrear and unpaid by the space of sixty days next after the time or times on which the same is above reserved to be paid, the same being first de-

manded, that then it shall and may be lawful to and for the said Elizabeth N. Bosley, her heirs and assigns, into the said demised premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, occupy, and enjoy, as in her or their former estate, until all such arrearages of rent, with legal interest therefor, and all and every cost, charge, and expense incurred by the said Elizabeth N. Bosley, her heirs or assigns, by reason of the non-payment of said rent, shall be fully satisfied and paid, or make distress therefor, at *his* or their option, at any time after the said rent shall become due; and also, if the said yearly rent or sum of two hundred and ten dollars, or any part thereof, shall be in arrear and unpaid by the space of one whole year next after the time or times on which the same is above reserved to be paid, the same being first demanded, that then it shall and may be lawful to and for the said Elizabeth N. Bosley, her heirs and assigns, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, occupy, and enjoy, as in her and their former estate; and that then, and in such case, this indenture, and every clause, matter, and thing herein contained, shall from thenceforth be utterly null and void and of none effect; and the said Horatio G. Armstrong, for himself, his executors, administrators, and assigns, doth hereby covenant and agree, to and with the said Elizabeth N. Bosley, her heirs and assigns, in manner following, that is to say, that the said Horatio G. Armstrong, his executors, administrators, and assigns, shall and will well and truly pay to the said Elizabeth N. Bosley, her heirs and assigns, during the said term hereby demised, the above reserved yearly rent or sum of two hundred and ten dollars lawful money aforesaid, in the manner and at the times above limited for the payment of the same; and also that the said Horatio G. Armstrong, his executors, administrators, and assigns, shall and will, during the said term hereby demised, bear, pay, and discharge all taxes, assessments, rates, and all other public dues whatsoever, which shall or may at any time hereafter be taxed, laid, assessed, or levied on the said piece, tracts, or parcels of land and premises above demised, or any part thereof, or on the rent issuing therefrom, to the collector thereof when required; and the said Elizabeth N. Bosley, for herself, her heirs, and assigns, doth hereby covenant and agree, to and with the said Horatio G. Armstrong, his executors, administrators, and assigns, in manner following, that is to say, that upon the payment of the rent above reserved, and performance of the covenants and agreements herein mentioned and reserved, on the part of the said Horatio G. Armstrong, his executors, administrators, and assigns, to be paid, kept, and performed, the said Horatio G. Armstrong, his executors, administrators, and assigns, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy, the above demised piece, tract, and parcel of land and premises, with all and every of their appurtenances, for and during the aforesaid term of ninety-nine years, for which the same is above demised, without the let, trouble, or interruption of

the said Elizabeth N. Bosley, her heirs, or assigns, or any other person or persons claiming any thing therein, by, from, or under her, them, or any of them; and also that, at any time or times hereafter, during the continuance of this present demise, and on the request and at the proper cost and expense of the said Horatio G. Armstrong, his executors, administrators, and assigns, and on his or their paying, or tendering in payment, the sum of ten dollars, lawful money as aforesaid, as a fine therefor to the said Elizabeth N. Bosley, her heirs, or assigns, the said Elizabeth N. Bosley, her heirs, and assigns, shall and will make and execute, or cause to be made and executed, to the said Horatio G. Armstrong, his executors, administrators, and assigns, or to such of them as shall be thereunto entitled, a new lease of the above demised piece, tract, and parcel of land and premises, for other ninety-nine years, to commence and take effect from and after the end of the term for which the same is above demised, subject to the same rents, and under the like covenants, clauses, and agreements, as are herein before mentioned, so that this present demise may be renewable and renewed forever.

And the said Elizabeth N. Bosley, for herself, her heirs, and assigns, doth hereby further covenant and agree, to and with the said Horatio G. Armstrong, his heirs, and assigns, well and truly, at any time hereafter, upon the payment of the sum of three thousand five hundred dollars, lawful money aforesaid, by the said Horatio G. Armstrong, his heirs, or assigns, over and above all the arrearages of ground rent due and accruing up to the day of such conveyance, that she, the said Elizabeth N. Bosley, her heirs, and assigns, shall and will, at the request of the said Horatio G. Armstrong, his heirs, and assigns, and at the proper cost and expense of the said Horatio G. Armstrong, his heirs, and assigns, make, execute, acknowledge, and deliver, or cause to be made, executed, acknowledged, and delivered, unto him, the said Horatio G. Armstrong, his heirs, and assigns, a good and sufficient deed, in fee simple, for all that the aforegoing piece, tract, and parcel of land and premises, so as aforesaid particularly mentioned and described, and hereby demised, free from all incumbrances, of every kind or nature whatsoever, created by, from, or under her, the said Elizabeth N. Bosley, her heirs, or assigns, or any of them, and particularly clear of the said above reserved yearly ground rent aforesaid.

In witness whereof the said Elizabeth N. Bosley and Horatio G. Armstrong have hereunto set their hands, and affixed their seals, the day and year first above written.

ELIZABETH N. BOSLEY, [L. S.]
H. G. ARMSTRONG. [L. S.]

Signed, sealed, and delivered, in the presence of—
T. HANSON BELT,
WILLIAM EICHELBERGER, of I.

CITY OF BALTIMORE, *to wit:*

On this eighteenth day of January, 1845, personally appeared before us, the subscribers, two justices of the peace for the city aforesaid, the within named Elizabeth N. Bosley and Horatio G. Armstrong, parties lessor and lessee aforesaid, they being known to us to be the persons who are named and described as, and professing to be, the parties to the aforegoing indenture of lease or instrument of writing, and severally acknowledged the same to be their respective act and deed, according to the true intent and meaning thereof. Acknowledged before,

T. HANSON BELT,
WM. EICHELBERGER, of I.

Received to be recorded, the 1st day of March, 1845, at 25 minutes past 11 o'clock, a. m. Same day recorded and examined.

Per A. D. BRADFORD, *Clerk.*

STATE OF MARYLAND,
Baltimore city, sct.

I hereby certify, that the within and aforegoing is a true copy, taken from liber T. K., No. 349, folio 514, &c., one of the land records of Baltimore county.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of Baltimore county court, this 25th day of April, in the year of our Lord 1849.

[L. S.]

A. D. BRADFORD,
Clerk Balt. co. court.

And now here, at this day, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-nine, come again into the circuit court here the said complainants, by their solicitor aforesaid, and the said Elizabeth N. Bosley, by James Mason Campbell, her solicitor.

Afterwards, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and forty-nine, the said complainants, by their solicitor aforesaid, filed in the circuit court here certain notes of argument, in the words and figures following, to wit:

Notes of argument.

BOSLEY et al.
[vs.]
BOSLEY.

Circuit court of the United States.

Upon a fuller view of the lease made by the testator after his will, to Mr. Armstrong, than the court had of it at the argument of this cause, I beg leave to submit a reference to a few authorities, to show that the devise of the leased ground is not by the leasing totally revoked.

The authenticated copy of the law filed with a petition of the complainants, exhibited since the audit was reported, although a lease for 99 years, renewable for ever, it is in lease but as an ordinary lease for a few years, or a single year.

The position which I regard as settled by the authorities is, that an alteration after a will, of only "the quality" of the estate, works no revocation. 4 Cruise, tit. Devise, ch. 6, § 78. In pursuance of this principle, it has been decided, at law and in equity, that lease of devised land, made after the will, is no revocation, the devise being abridged, so far as actual possession is taken away by the lease, but remaining unimpaired as to the "inheritance," and so passing the reversion and the incident rent reserved by the lease. 4 Cruise, tit. Devise, ch. 6, § 89, 90; 1 Vern., 97; Cro. Ca., 23, Hodgkinson vs. Wood; Cro. Jac., 49, Cook vs. Bullock.

The cases in the Crokes are fuller, as to the effect of the lease, than the text of Cruise; and they give their operation of the lease as I have stated it. If this view be admitted by the court, the plaintiffs are entitled to the benefit of the rent reserved upon the lease, and to all the testator's rights as lessor, and an account as to the rents would be proper to be decreed.

This lease was not adverted to in the argument, or the authorities now respectfully brought to the court's notice would have then been submitted.

CHARLES F. MAYER,
For complainants.

26th November, 1849.

And on the same day the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here a submission of the cause, in the words following, to wit:

BOSLEY
vs.
BOSLEY.

Submission of the case.

This case is submitted by the defendant, who considering the case to be decided by the decree already passed, is willing that the court shall decide it finally without further argument by her solicitor, who waives the right to reply to any notes which may be filed by the complainants' solicitor.

J. M. CAMPBELL,
Solicitor for E. N. Bosley.
CHARLES F. MAYER,
Solicitor for plaintiff.

26th November, 1849.

And now here, at this day, to wit, the first day of December, in the

year of our Lord one thousand eight hundred and forty-nine, the circuit court here made and passed the following decree, to wit:

Final decree.

MARY LUCINDA BOSLEY and others
vs.
ELIZABETH N. BOSLEY. } In equity.

November T., A. D. 1849.

In the circuit court of the United States, for the fourth circuit and Maryland district.

This cause came on to be further heard, and was submitted by the solicitors of the respective parties upon the master's report, and the complainants' petition for a new reference to the master, and the bill and answer, and all other the proceedings were read and considered.

It is thereupon, this first day of December, in the year of our Lord 1849, by the circuit court of the United States, in and for the fourth circuit and Maryland district, sitting in equity, adjudged, ordered, and decreed, that the petition of the claimants filed on the 21st day of May in this present year of our Lord, and the bill so far as the complainants James Bosley and Meldrid Bosley, be dismissed; that the master's report be finally ratified and confirmed; and that the defendant, Elizabeth N. Bosley, do pay to each of the complainants, John Bosley, Henry Bosley, and Mary Lucinda Bosley, the sum of $189.20, (one hundred and eighty-nine dollars [and] twenty cents,) with interest thereon till paid, from the 27th day of April, in this present year of our Lord, and the like sum of 189.20, (one hundred and eighty-nine dollars [and] twenty cents, to Mary Jane Davis and Sally Ann Davis, with interest from the day and year last mentioned until paid.

It is further ordered, adjudged, and decreed that each party do pay their respective costs of suit, to be taxed by the clerk.

R. B. TANEY,
U. S. HEATH.

Afterwards, to wit, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the said Elizabeth N. Bosley, by her solicitor aforesaid, files in the circuit court here a petition in the words following, to wit:

Petition for leave to pay the amount of the decree into court.

MARY LUCINDA BOSLEY and others
vs.
ELIZABETH N. BOSLEY.

To the honorable the judges of the circuit court of the United States, in and for the fourth circuit and Maryland district, sitting in equity.

The petition of the defendant in this case shows:

That she desires leave to pay into court the amount of the decree in